

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105**

In the matter of:)	ORDER
)	SECTION 13(a)
)	
ContextLogic Inc.)	FEDERAL INSECTICIDE, FUNGICIDE,
doing business as (dba))	AND RODENTICIDE ACT
Wish)	
Respondent.)	Docket No. FIFRA-09-2022-4501
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I. AUTHORITIES

1. This Stop Sale, Use, or Removal Order (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136k(a), which authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is a reason to believe that, *inter alia*, the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. This authority has been delegated from the EPA Administrator to the Manager of the Toxics Section, Enforcement & Compliance Assurance Division, EPA, Region IX through the Regional Administrator for EPA Region IX.¹

II. STATUTORY AND REGULATORY BACKGROUND

3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, “it shall be unlawful for any person in any State to distribute or sell to any person . . . any pesticide that is not registered . . . or whose registration has been suspended or cancelled.”
4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states, “it shall be unlawful for any person in any State to distribute or sell to any person . . . any pesticide which is adulterated or misbranded.”

¹ EPA Administrator Delegation of Authority 5-12. Issuance of Stop Sale Use or Removal Orders (1200 TN 350 5-12) (Jan 18, 2017); EPA Region 9 Delegation of Authority (R9-1200 TN 2017-01) R9-5-12 (March 8, 2017); and EPA Region 9 Organizational Realignment General Redelegation of Authority (May 5, 2020).

5. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”
7. The implementing regulations at 40 C.F.R. § 152.3 further explains that, “[d]istribute or sell’ and other grammatical variations of the term such as ‘distributed or sold’ and ‘distribution or sale,’ means the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”
8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” See also 40 C.F.R. § 152.15.
9. The term “pest” is defined as “any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) [of FIFRA].” Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
10. The implementing regulation at 40 C.F.R. § 152.15 further explains that, “[a] pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise); (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than: (1) use for pesticidal purpose (by itself or in combination with any other substance); (2) use for manufacture of a pesticide; or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”
11. Section 3(a) of FIFRA, 7 U.S.C. § 136a, provides that “no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.” See also 40 C.F.R. 152.15, which also provides that, “[n]o person may distribute or sell any pesticide product that is not registered under the Act”, with certain exceptions not applicable here.

12. The regulation at 40 C.F.R. § 168.22 was promulgated to explain the EPA's policy with regard to enforcing Sections 12(a)(1)(A) and (B) of FIFRA; that regulation provides that, "FIFRA sections 12(a)(1) (A) and (B) make it unlawful for any person to "offer for sale" any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access." 40 C.F.R. § 168.22(a).
13. The regulation at 40 C.F.R. § 168.22 provides further that, "EPA regards it as unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to place or sponsor advertisements which recommend or suggest the purchase or use of...[a]ny unregistered pesticide for any use unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section." 40 C.F.R. § 168.22(b)(4).
14. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), a pesticide is "misbranded" if, among other things: (A) "its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular," or if (E) "Any word, statement, or other information required by or under the authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." Pursuant to Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), a pesticide is "misbranded" if, among other things, the label does not bear an ingredient statement as specified in that provision.
15. The term "label" is defined as "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers." Section 2(p)(1)(A) of FIFRA, 7 U.S.C. § 136(p)(1)(A).
16. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines "labeling" in part, as "all labels and all other written, printed, or graphic matter –
(A) accompanying the pesticide or device at any time; or
(B) to which reference is made on the label or in literature accompanying the pesticide..." and defines "label" as "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers."
17. Pursuant to the authority in section 25(a) of FIFRA, 7 U.S.C. § 136w(a), the Administrator promulgated the labeling requirements for pesticides found at 40 CFR Part 156. General requirements for pesticide labeling include, but are not limited to, that the contents of a label must show clearly and prominently the following information: (i) The name, brand, or trademark under which the product is sold; (ii) The name and address of the producer, registrant, or person for whom produced; (iii) The net contents; (iv) The product registration number; (v) The producing establishment number; (vi) An ingredient statement; (vii) Hazard and precautionary statements for human and domestic animal hazards and environmental hazards; (viii) The directions for use; and (ix) The use

classification(s). 40 C.F.R. §§ 156.10(a)(1). All required label or labeling text shall appear in the English language. When additional text in another language is necessary, all labeling requirements will be applied equally to both the English and other-language versions of the labeling. 40 C.F.R. § 156.10(a)(3). 40 C.F.R. § 156.10(a)(5) provides examples of false and misleading statements or representations in the labeling which constitute misbranding. They include but are not limited to:

- (a) A false or misleading statement concerning the effectiveness of the product as a pesticide or device (40 C.F.R. § 156.10(a)(5)(ii));
- (b) A false or misleading comparison with other pesticides or devices (40 C.F.R. § 156.10(a)(5)(iv));
- (c) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government (40 C.F.R. § 156.10(a)(5)(v));
- (d) A true statement used in such a way as to give a false or misleading impression to the purchaser (40 C.F.R. § 156.10(a)(5)(vii));
- (e) Claims as to the safety of the pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed” (40 C.F.R. § 156.10(a)(5)(ix)); and
- (f) Non-numerical and/or comparative statements on the safety of the product, including but not limited to: (A) “Contains all natural ingredients”; (B) “Among the least toxic chemicals known” (C) “Pollution approved” (40 C.F.R. § 156.10(a)(5)(x)).

- 18. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, “it shall be unlawful to violate any regulation issued under FIFRA section 3(a) or section 19.”
- 19. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(1), states that it shall be unlawful for any person to violate any order issued under section 13 of FIFRA.

III. BASIS FOR THE ORDER

- 20. ContextLogic Inc. (“ContextLogic”) is a corporation incorporated in Delaware with its main office located in California. Therefore, ContextLogic is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- 21. This Order refers to ContextLogic and all its divisions, offices, and subsidiaries collectively as “CLI” or “Respondent.”
- 22. CLI owns, operates and/or controls the interactive e-commerce store located at the domain address www.wish.com (“Wish”) and one or more apps offered under the name Wish which allows consumers to shop for and purchase products online.
- 23. CLI has and may continue to own, operate and/or control other websites and apps for online marketplaces under names including Geek, Cute, Mama, and Home. This Order

refers to CLI's marketplace websites, apps, or services including Wish, Geek, Cute, Mama and Home collectively as CLI's "online marketplaces."

24. CLI's revenues include fees from successful transactions on CLI's online marketplaces. CLI charges its customers that list products on CLI's online marketplaces ("merchants") a percentage or a set amount of the Listing list price when an item sells. In exchange for those fees, CLI provides virtual shelf space for consumer products, and engages in retail and marketing activities to ensure successful sales transactions on its online marketplaces. CLI also generates revenue from its logistics services to its merchants.
25. Beginning December 31, 2019, the EPA began collecting and reviewing information concerning potentially violative products. As detailed below, the EPA inspected Wish.com webpages offering pesticide products for sale, conducted an inspection of CLI's headquarters, and sent a notice and an information request to CLI. The EPA also purchased samples of products subject to this Order. The EPA's review of the information gathered formed the basis for the factual allegations set forth herein and the Agency's reason to believe that CLI has distributed or sold, and intends to continue distributing or selling, pesticides that are unregistered and/or misbranded in violation of FIFRA.
26. On February 27, 2020, EPA inspectors conducted an inspection of Context Logic Inc. at 1 Sansome Street, San Francisco, California. EPA provided CLI with a notice that this inspection was "for cause" due to numerous items on Wish.com's website that were found to contain pesticidal claims but did not appear to have EPA Registration Numbers or EPA Establishment Numbers.
27. On March 20, 2020, EPA notified CLI of potential unregistered and misbranded pesticides being sold on CLI's online marketplaces. Attachment B to this Order contains the products that EPA identified to CLI in this March 20, 2020 notice. To assist in cross-referencing, each of the product groups listed in Attachment A to this Order also identifies the corresponding products that EPA identified to CLI in this March 20, 2020 notice.
28. On April 7, 2020, EPA sent an information request to CLI, and EPA notified CLI of potential unregistered and misbranded pesticides being sold on CLI's online marketplaces on April 6, 2020. Attachment C to this Order contains the products that EPA identified to CLI in the April 7, 2020 information request. To assist in cross-referencing, each of the product groups listed in Attachment A to this Order also identifies the corresponding products that EPA identified to CLI in this April 7, 2020 information request.
29. On June 2, 2020, EPA identified products to purchase from Wish.com. Between June 2 and June 19, 2020, these products were held and offered for sale on the Wish website, sold on the Wish website, and received as specified in Attachment A to this Order. Between June 2, 2020 and November 17, 2021, the purchaser ordered and paid for these products on the Wish website, received customer support for these products from Wish via the Wish website, was informed by Wish that Wish had refunded money to the purchaser (in such instances where refunds were provided to the purchaser), and the purchaser was able to track packages, including that some products were shipped via

WishPost. Attachment A to this Order lists products received from Wish.com under the subheaders “Example Products Purchased.”

30. The same product offered by multiple merchants on CLI’s online marketplaces may have multiple product identification numbers assigned by CLI.
 - a. When a merchant lists a product on a CLI online platform, CLI assigns it a unique product ID number (“PID”) specific to that product and merchant and that PID is incorporated into the listing URL.
 - b. An example of a product purchased on Wish from different Wish merchants that has different PID numbers incorporated into each listing URL is “30ml Antiseptic Disinfectant Spray Alcohol-free Sterilizer Germicidal Home Spray” provided by Wish merchants B123 and ModasCarol. See Product EPA ID 113/ERG ID FIFRA and Product EPA ID 119/ERG ID FIFRA-0091 listed in Attachment A to this Order.
 - c. A second example of a product purchased on Wish from different Wish merchants that have different PID numbers incorporated into each listing URLs is Eelhoe brand Non-alcoholic Car Disinfection Spray provided by Wish merchants lkkq and Yuhang Ecommerce Limited Company. See Product EPA ID 112/ERG ID FIFRA-0086, Product EPA ID 115/ERG ID FIFRA-0054 listed in Attachment A to this Order.
31. After ordering and paying for products on the Wish.com online marketplace, the purchaser attempted to directly contact the listed merchants and found that Wish.com does not provide a method for contacting these merchants directly. The purchaser asked questions and received answers via the Wish.com chat support.
32. Between January 5, 2022 and May 10, 2022, the EPA inspected Wish.com webpages offering pesticide products for sale and documented webpages on the Wish website holding and offering for sale the products identified in Attachment A to this Order under the subheaders “Example 2022 Offers for Sale.”
33. As set forth below in section IV, CLI’s control over and participation in retail and marketing activities on CLI’s online marketplaces constitute distribution or sale as the term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3. Therefore, on multiple occasions between at least March 20, 2020 and May 10, 2022, CLI distributed or sold the products listed in Attachment A of this Order.

Distribution or Sale of Unregistered Pesticides

34. Each product listed in Attachment A to this Order was offered for sale on the Wish website with claims and statements that the product can and should be used as a pesticide. As listed in Attachment A to this Order, each offer for sale of these products made on the Wish website specifically make claims for use against virus, bacteria, and/or germs.
35. As specified in Attachment A to this Order, the labeling statements for certain products also indicate that the products are intended for preventing, destroying, repelling, or mitigating any pest.

36. Any claim or statement that a product can be used to kill a pest (including any virus, bacteria, or other micro-organism including “germs”) is a pesticidal claim that renders the product a pesticide. See 40 C.F.R. § 152.10, 152.15. See also 40 CFR § 158.2204.
37. Accordingly, the products listed in Attachment A to this Order are “pesticides” as defined in Section 2(u) of FIFRA and must be registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. See also 40 C.F.R. § 152.15.
38. At no time relevant to this Order were the products listed in Attachment A to this Order registered with the EPA. Therefore, the EPA has reason to believe that CLI distributed or sold, and intends to further distribute or sell, the unregistered pesticides in Attachment A to this Order in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Distribution or Sale of Misbranded Pesticides

39. Attachment A to this Order identifies certain products being distributed and sold on the Wish website with claims that the product is for use against virus, bacteria, or other microorganisms on or in surfaces, air or water but the labeling accompanying the product contains no English-language instructions for use.
- (a) Each of these products is a pesticide requiring registration pursuant to 40 C.F.R. § 152.15(a)(1) and (2) and (c) because the offer for sale on the Wish website includes claims that the product can or should be used against virus, bacteria, or other microorganisms.
 - (b). A claim or statement that a pesticide can control pest microorganisms is an efficacy claim that must be evaluated and approved by the EPA. 40 CFR §§ 158.1, 158.2204, 158.2220. At no time were the product claims for use against bacteria, virus or other microorganisms approved by the EPA.
 - (c). Accordingly, any claims for use against bacteria, virus or other microorganisms made for these products on product labeling are false or misleading and the products are each misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).
 - (d) In addition, the labeling accompanying each of these products does not contain label or labeling text in English as required at 40 CFR Part 156. The required information that is missing includes: (1) The name and address of the producer or person for whom produced; (2) An ingredient statement; (3) Hazard and precautionary statements for human and domestic animal hazards and environmental hazards; and (4) Directions for use.
 - (e). Accordingly, the products are each misbranded pursuant to Sections 2(q)(1)(E) and 2(q)(2)(A) of FIFRA, 7 U.S.C. §§ 136(q)(1)(E) and 136(q)(2)(A).
40. Therefore, the EPA has reason to believe that CLI distributed or sold, and intends to further distribute or sell, the misbranded pesticides in Attachment A in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

IV. FACTUAL BACKGROUND

41. To list products for sale or buy on CLI's online marketplaces such as Wish, all users must agree to CLI's User Agreement (the "User Agreement"), which includes a Terms of Service Agreement and CLI's Merchant Terms of Service and Agreements, and this User Agreement governs all activities on CLI's online marketplaces. The User Agreement contains CLI's conditions and restrictions on what products may be listed, how products are described, advertised, priced, shipped, how sales transactions are processed, and all communications that occur between CLI's customers (merchants and buyers). The User Agreement incorporates all other policies and additional terms posted on CLI's sites, applications, tools, and services. If a merchant fails to abide by the User Agreement, by its terms, CLI has the authority to remove listed products, display products lower than other products in search results, withhold, offset, or retain payments to a merchant, and suspend or terminate a merchant's account.
42. The User Agreement identifies customers who list products for sale as "merchants" and states in relevant part:
 - a. Policy Overview: "...Wish merchants are required to adhere to the Merchant Terms of Service and Agreement (in addition to any Additional Terms and Policies as defined within the Merchant Terms of Service and Agreement). In addition to the actions Wish may take when a merchant violates the Wish policies below, merchants may also be subject to the other remedies available to Wish as set forth in the Merchant Terms of Service and Agreement."
 - b. Policy 8 "Account Suspension": "A merchant's negative conduct on the platform, either by violating a Merchant Policy or exploiting Wish's systems to cause an adverse user experience, may result in a temporary or permanent suspension that may include one or more of the following: Account privileges temporarily or permanently suspended[.] Account termination[.] Payments withheld for up to 3 months or permanently forfeited (depending on the merchant's conduct)[.] Refund responsibility (100%) of all customer refunds"
 - c. Merchant Terms of Service and Agreement Section 2 "Right to Refuse Service": "Wish reserves the right to ... to refuse to offer the Services to you for any violation or suspected violation of this Agreement or Applicable Laws, with or without notice to you. We may also discontinue the Services or any part of the Services and delete all data or other information associated with your account (including any materials you may submit to us)."
 - d. Merchant Terms of Service and Agreement Section 2 "Membership Eligibility": "Wish may refuse to offer access to or use of the Services to any person or entity or change its eligibility criteria at any time as provided herein."
43. The User Agreement has restrictions regarding arranging a sale outside of the Wish platform. The User Agreement states in relevant part:
 - a. Merchant Terms of Service and Agreement Section 5 "Listing and Selling": "You may not do anything intended to avoid or having the effect of avoiding any fees due to Wish, or otherwise intended to violate this Agreement, including, without limitation, altering a product's or service's price after a sale, misrepresenting the location of a product or service, using another merchant's account without

permission, or arranging a sale outside of the Wish platform to avoid paying fees to Wish.”

- b. Merchant Terms of Service and Agreement Section 6 “Prohibited, Questionable and Infringing Items and Activities”: “Your Content, use of (or activity on) the Services, and products sold over the Services shall not...Solicit business for, direct sales to, or promote any website, service, or entity outside of the Services”
 - c. Policy 8.2: “If a merchant has asked customers for their personal information including email address, payment information, etc., the merchant account is at risk of suspension.”
 - d. Policy 8.3: “If a merchant asks a customer to pay them outside of Wish, or requests a direct payment from a customer, the merchant account is at risk of suspension.”
 - e. Policy 8.7: “If a merchant has asked customers to visit stores outside of Wish or redirect customers outside Wish in any way, the merchant account is at risk of suspension.”
44. CLI sets the terms for product listings with its listing requirements and provision of product information. The User Agreement states in relevant part:
- a. The Merchant Terms of Service and Agreement Section 5 “Listing and Selling” states:
 - i. the merchant is “solely responsible for accurately describing ... products and services and all terms of sale...”
 - ii. “By listing any product or service on the Services, you warrant that you and all aspects of such product or service comply with this Agreement (including all Additional Terms and Policies), and other published policies, and relevant Applicable Laws.”
 - iii. “Your listings may only include content relevant to the sale of that product or service.”
 - iv. “All products and services must be listed in an appropriate category with appropriate tags.”
 - v. “Each listing must truthfully, accurately and completely describe the product(s) or service(s) for sale in that listing. If the “in stock” quantity is more than one, all products in that listing must be identical.”
 - vi. “Binding Sale: All sales are binding. You agree to all applicable provisions related to sales as outlined in the Additional Terms and Policies. You are obligated to ship the applicable order in a prompt manner after a sale is made over the Services or you otherwise complete the transaction with the applicable buyer. The cost arising from not completing orders in time shall be undertaken by you.”
 - b. The Listing Policy states:
 - i. Policy 2.2: “Listing the same product multiple times is prohibited. ... If a merchant uploads duplicate products the products will be removed and the account risks suspension.”
 - ii. Policy 2.3: “Should a merchant change a product listing (e.g., product name, description, images) those changes must comply with Wish’s policies... Product listings found to violate Wish’s policies will be removed, all payments may be withheld or forfeited, and the merchant account may be suspended.”

- b. The Fulfillment Policy states:
 - i. Policy 5.1: “All orders must be fulfilled in 5 calendar days[.] If an order is not fulfilled in 5 calendar days after the order is released to the merchant, the order will be considered unfulfilled and the merchant will receive an infraction warning, orders will be auto refunded, associated products might be disabled, and merchants may face possible negative impacts to its Wish Standards tier. Repeat violations may result in suspension or termination from Wish.”
45. The User Agreement has requirements for Customer support. The User Agreement states in relevant part:
- a. Policy 6.1: “Where customers have the ability to contact Merchants directly or where Merchants have opted to provide their own customer support, it must comply with policies 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7.”
 - b. The Merchant Terms of Service and Agreement Section 5 - “Listing and Selling”:
 - i. “Customer Support: Wish may provide you with a mode by which you may receive and respond to inquiries from Wish users, including questions about product issues, shipping, delivery, returns, and refunds. In such event, you understand and agree that Wish may establish certain service-level agreements (“SLAs”) related to your responses (e.g., timing to respond, types of permitted communications with customers, etc.), to which you will be required to adhere.”
 - ii. “You further agree that Wish, in its sole discretion (and including in the event you do not respond in accordance with an SLA), also may, but is not obligated to, provide support to customers as a service to you, including with respect to complaint intake and answering questions about logistics (including shipping, delivery, returns, and refunds), without taking title to any products and provision of such support shall not, and shall not be deemed to, transfer title to Wish.”
46. CLI collects payments for products sold on the CLI online platforms. The User Agreement states in relevant part:
- a. The Merchant Terms of Service and Agreement Section 4 “Appointment of Wish as Limited Payment Collection Agent” states:
 - i. “You hereby appoint Wish as your payment collection agent, solely for the limited purpose of accepting funds from Wish users who purchase items through the Services.”
 - ii. “You agree that any funds resulting from a Wish user’s purchase of any product or service through the Services and received by Wish from a Wish user shall be considered the same as a payment made directly to you by a Wish user. You further agree that you will provide the purchased products or services to the Wish user in the agreed-upon manner as if you have received the payment directly from the Wish user. You agree that Wish may refund the Wish user in accordance with Wish’s Return Policy. ...”
 - iii. “You agree that any obligation of a Wish user to pay you for the purchase of any products or services through the Services is extinguished upon the Wish user’s payment of the funds to Wish, upon which Wish then is responsible for remitting the funds to you in the manner described in this

Agreement, the Fees and Payments Policy, or as otherwise communicated by Wish to you. Your funds are not eligible for payment to you unless and until all terms in this Agreement, the Fees and Payments Policy, and Wish's Terms of Use are satisfied. In the event that Wish does not remit any such payment or funds to you, you will have recourse only against Wish and not the Wish user directly."

- iv. "You agree that Wish may honor any governmental or judicial order attaching, garnishing, or levying upon funds otherwise payable to you hereunder and that any payment to a governmental authority or a third party pursuant to a court order by Wish as required by such order shall relieve Wish of any obligation to pay such funds to you."
- b. The Merchant Terms of Service and Agreement Section 3 "Fees and Payments" states:
 - i. "Payment: Wish will make payments to you, in connection with your use of the Services, as set forth in this Agreement and its Fees and Payments Policy or as otherwise communicated to you by Wish. You understand and agree that Wish's obligation to pay you is expressly subject to the terms of and your compliance with this Agreement and is conditioned upon Wish's successful receipt of funds from Wish users who purchase items through the Services."
 - ii. "In addition to the above, Wish may elect to delay the remittance and withhold the amounts payable to merchants, or any other payment due under this Agreement or its Fees and Payments Policy or as otherwise communicated to you by Wish, until such time as Wish receives valid confirmation of product delivery. Transactions for which Wish cannot confirm valid delivery may be ineligible for payment and may subject your account balance to temporary or permanent holds or account suspension."
 - iii. "Moreover, if Wish determines that your actions or performance may result in returns, chargebacks, claims, disputes, violations or suspected violations of this Agreement, or other risks to Wish or third parties, or reflect pending or otherwise unrecoupable balances, then Wish may withhold and/or set off or offset any payments to you for as long as Wish determines such conditions or any related risks to Wish or third parties persist. For any amounts that we determine you owe us, we may (a) charge your account or any payment instrument you provide to us; (b) set off or offset any amounts that are payable by you to us (in reimbursement, converting balances in your account to Wish, or otherwise) against any payments we may make to you or amounts we may owe you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to you; or (e) collect payment or reimbursement from you by any other lawful means."
 - iv. "If we determine that your account has been used to engage in deceptive, fraudulent, or other illegal activity, or to violate this Agreement, then we may permanently withhold and/or set off or offset and retain any payments that otherwise may have been payable to you. In addition, we may require that you pay other amounts to secure the performance of your obligations under this Agreement or to mitigate the risk of returns, chargebacks,

claims, disputes, violations or suspected violations of this Agreement, or other risks to Wish or third parties. These amounts may be refundable or nonrefundable in the manner we determine, which may include converting balances in your account to Wish, and failure to comply with this Agreement, including any applicable Policies, may result in their forfeiture.”

47. Whether or not CLI has title to any products, CLI can determine whether a customer will receive a refund, adjustment, or replacement and can act to comply with this order. The User Agreement states in relevant part:
- a. The Merchant Terms of Service and Agreement Section 5 “Listing and Selling” states:
 - i. “In no event shall title to any products transfer to Wish, even if Wish takes possession of a product in connection with any sale, product return, or disposition of abandoned products...”
 - ii. “If we determine that the performance of your obligations under this Agreement may result in returns, claims, disputes, or violations of this Agreement, or cause any other risks to us or third parties, then we may mitigate them, including by determining whether a customer will receive a refund, adjustment, or replacement for any of your products or services for as long as we determine any related risks to us or third parties persist.”
 - iii. “Disposition of Products in Compliance with Legal Requirement: Wish, directly or through its designee, shall have the right to take possession and dispose of products to comply with any Applicable Laws or any order or other requirement of any court, arbitrator, or other governmental authority and to withhold and/or set off or offset any payments to you for all costs incurred by Wish in connection with such disposal.”
 - b. The Refund Policy states:
 - i. Section 7.3: “Merchant is responsible for 100% of any refund on orders without valid or accurate tracking information[.] If an order has invalid, inaccurate or missing tracking information, the merchant is responsible for 100% of the cost of a refund on that order.”
 - ii. Section 7.4: “Merchant is responsible for 100% of any refund on an order that is confirmed fulfilled after 5 or more calendar days[.] If the confirmed fulfillment date is 5 calendar days or more after an order’s released time, the merchant is responsible for 100% of the cost of a refund on that order.”
 - iii. Section 7.5: “Merchant is responsible for 100% of any refund on an order with excessively delayed confirmed delivery[.] ...”
 - iv. Section 7.6: “Merchant is responsible for 100% of any refund due to a size issue[.] If a refund occurs due to a customer sizing issue, the merchant is responsible for 100% of the cost of the refund.”
 - v. Section 7.7: “Merchant is responsible for 100% of any refund on an order where merchant engages in fraudulent activity[.] If a merchant engages in fraudulent activity or circumvents revenue share, they are responsible for 100% of the cost of any refund on the fraudulent orders.”
 - vi. Section 7.9: “Merchant is responsible for 100% of any refund for items not matching the listings[.] If a refund occurs because the item received

does not match the product listing being sold, the merchant is responsible for 100% of the cost of the refund. Note: Product images should accurately depict the product being sold. Contradictions between the product image and product description could result in refunds for items not matching the listings....”

- vii. Section 7.18: “Merchant is responsible for 100% of any refund for orders shipped with unaccepted carriers[.] If an order is shipped with an unaccepted carrier, the merchant is responsible for 100% of the cost of refunds. Merchants are not allowed to dispute these refunds. Learn which carriers are accepted on the Wish platform...”
- viii. Section 7.20: “Merchant is responsible for 100% of any refund for products that are reported as dangerous or illegal in certain countries[.] If a merchant lists products that are considered to be dangerous or illegal in a country in which the products are sold, the merchant is responsible for 100% of the cost of refunds for all orders from these specific countries. Due to the nature of these policy violations, merchants may not dispute these refunds.”

- 48. When displaying a product on Wish or another CLI online marketplace, CLI can provide customers with other products offered for sale on Wish (or the relevant online marketplace) that are deemed of interest to the customer and these products can include products that are deemed akin to the product being viewed.
- 49. The User Agreement has provisions for CLI to rank or differentiate merchants and products based on a merchant’s ranking or other factors, including CLI’s economic and commercial reasons, and the User Agreement authorizes CLI to apply algorithms, know-how, and other systems to set the final price of each item shown to a Wish customer. The User Agreement states in relevant part:
 - a. Policy 14 “Wish Standards” states:
 - i. Policy 14.2: “Wish Standards uses ... tiers (listed from highest to lowest tier) to define performance... Merchants who have not met the tier rating requirements or who are new to Wish are “Unrated” rather than being assigned a Wish Standards’ tier. Merchants are assigned tiers as determined by various criteria, including: •User feedback ratings •Order fulfillment rate •Confirmed fulfillment speed •Valid tracking rate •Compliance with Wish policies •Refund rate •Policy compliance[.]”
 - ii. Policy 14.3: “The higher the Wish Standards’ tier, the better the potential benefits, which may include: •Impression boosts •Premier badge and “Premier Merchant” tag ... displayed to customers in the Wish app/wish.com •Higher frequency payment disbursement[.] Merchants in lower tiers ... face certain consequences, including reduced impressions and, in certain cases, suspension/termination from the Wish platform.”
 - b. The Merchant Terms of Service and Agreement, Section 5 - “Listing and Selling” states:
 - i. “Other: Wish generally strives for equal treatment of the Wish merchants. However, Wish might differentiate merchants for reasons including the following: (i) products offered by Wish merchants that participate in the paid ProductBoost service might be favored due to economic and

commercial reasons; (ii) products offered by merchants with high ratings may be favored over those offered by merchants with lower ratings; (iii) products offered by merchants with low refund rates may be favored over those offered by merchants with higher refund rates; (iv) products offered by merchants in regions in close proximity to a Wish customer may be favored over products offered outside those regions; (v) products offered by Wish or its Affiliated companies might be favored for economic and commercial reasons; (vi) products whose merchants offer faster shipping options may be favored over products whose merchants offer slower shipping options; (vii) products whose merchants offer lower prices may be favored over merchants offering the same product for more; (viii) the length of relationship between Wish and its merchants; or (ix) the nature of the product sold or the volume of sales by the Wish merchant. Favored treatment may include scenarios such as higher position in rankings; increased direct or indirect remuneration to the merchant for use of the Services; or other merchandising support. Wish encourages its merchants to provide Wish customers with the fastest shipping options and lowest prices possible.”

- ii. “Wish product listings, including those resulting from user searches, are ranked according to various factors. These factors are determined solely by Wish, are designed to help ensure that Wish customers see the items that they might find most relevant, and, in addition to the foregoing bases for differentiating between merchants, may also consider a Wish customer’s prior engagement with Wish, a Wish customer’s prior orders and search history, the terms used in a Wish customer’s search query, Wish’s attempts to expand and understand the appeal or interest in new product categories or offerings, a Wish customer’s location, the Wish merchant’s rating, the historical revenue per impression of the product or service listing, the Wish merchant’s refund rate, whether a Wish merchant participates in the paid ProductBoost service (which participation might increase the ranking of a merchant’s listing), and the overall standing of the Wish merchant on the Wish platform.”
- iii. “You acknowledge and agree that, as part of the Services provided to you, Wish may use its algorithms, know-how, and other systems to set the final price of each item shown to a Wish customer. This final price may be lower, higher, or the same as the listing price you provide, and you acknowledge and agree that Wish may retain any amounts collected from Wish customers that exceed your or any other merchant’s listing price.”

- 50. CLI provides its merchants with a cross-border logistics product called Wish Post through which they can select and pay CLI-approved shipping carriers and generate shipping labels and shipping invoices.
 - a. Wish Post is the mechanism by which CLI coordinates with service providers that ship, deliver or receive for shipment, store or physically handle the products for which merchants use Wish Post.
 - b. One Wish Post service provider is China Post, the national postal operator of China.
 - c. CLI requires that its merchants use Wish Post for certain orders.

- d. Use of the Wish Post service is designed by CLI to result “in better logistics, positive customer experiences, and overall merchant success on the Wish Platform.”
51. The User Agreement requires CLI’s merchants to ship products using the carriers and methods authorized by CLI. For example, the User Agreement states in relevant part:
- a. Policy 5.2: “Orders that qualify for the Confirmed Delivery Policy must be shipped with one of our Confirmed Delivery carriers that provide last mile tracking. The Confirmed Delivery Policy affects orders that are shipped to the following countries with an order value above their respective thresholds. Order value is defined as 'quantity * (merchant price + merchant shipping)'...United States ... $\geq \$10.00$ ”
 - b. Policy 5.3: “An order must be confirmed fulfilled by the carrier within the following designated amount of time: Orders less than \$100.00 (merchant price per item + shipping price per item) must be confirmed fulfilled within 168 hours of the order being released. If an order is not confirmed fulfilled in the designated amount of time, the merchant will receive an infraction warning, possible negative impacts to its Wish Standards tier, and possible responsibility for 100% of refunds for orders that have delayed confirmed fulfillment. Repeat violations may result in suspension or termination from Wish...”
 - c. Policy 5.4: “Orders must not be fulfilled with misleading tracking numbers [.] If at any time a merchant provides a tracking number found to be misleading, the merchant faces the risk of an infraction warning and negative impacts to the merchant’s Wish Standards tier. Repeat violations may result in suspension or termination from Wish.”
 - d. Policy 5.5: “Shipping from Mainland China - WishPost Only[.] WishPost is the only accepted shipping carrier for orders shipped from Mainland China... Merchant stores detected to violate these shipping policies will be subject to payment withholding and/or possible suspension. Addendum: Merchants may only remove an Advanced Logistics Program order from the program for one of the reasons stated within this policy. All Advanced Logistics Program orders that are removed by merchants from the program and allowed to be shipped from warehouses outside of Mainland China must be fulfilled with a Confirmed Delivery Carrier. As such, merchants must also comply with the confirmed delivery timeline requirements outlined for these orders: Merchant Policy 5.2 and Merchant Policy 7.5. For Advanced Logistics Program orders that are removed by merchants for reasons other than "Shipping from outside of Mainland China" (i.e., the order will originate from Mainland China): If the order is subject to the Confirmed Delivery Policy, merchants must fulfill the order with WishPost and select an appropriate WishPost logistics channel and service level that provide last-mile tracking (i.e. delivery confirmation); If the order is not subject to the Confirmed Delivery Policy, merchants may fulfill the orders with any WishPost logistics channel of their choice.”
 - e. Policy 5.6: “Order Cancellation Policy[.] If an order is found to have been cancelled or refunded by the merchant prior to confirmed fulfillment, the merchant that violates this policy faces the risk of an infraction warning and negative impacts to the merchant’s Wish Standards tier. Repeat violations may result in suspension or termination from Wish....”

52. As detailed above, CLI sets the terms for product listings with its listing requirements and provision of product information and CLI sets the terms to ensure that consumers can access and in fact purchase products.
53. Based on the above, CLI is offering for sale and selling pesticide products on CLI's online marketplaces. Therefore, CLI's actions meet the definition of "to distribute or sell" as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. § 136gg. 40 C.F.R. § 152.3.

V. ORDER

54. Pursuant to the authority in section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby orders CLI to **immediately cease** the distribution and sale of unregistered and misbranded products listed in **Attachment A** (collectively, "Violative Products") including those listed under different CLI product identification numbers, under its ownership, control, or custody, wherever such products are located on its online marketplaces, except in accordance with the provisions of this Order.
55. This Order shall extend to all quantities and sizes of the Violative Products currently offered for sale on CLI's online marketplaces or intended for sale or distribution. The Violative Products shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.
56. CLI is hereby requested to notify this office in writing, within ten days of receipt of this Order, of corrective actions CLI intends to take regarding the Violative Products.
- A. Your reply should be sent to: Julie Jordan, Enforcement Division (ENF-1-1), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, or at jordan.julie@epa.gov
- B. CLI may assert a business confidentiality claim covering all or part of the above information requested, in the manner described by 40 C.F.R. § 2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If you believe that any of the information qualifies as Confidential Business Information, please inform the EPA contact listed above before submitting the information to allow us to institute appropriate Agency procedures for transmitting this information. If no such claim accompanies the information when it is received by the EPA, the information may be made available to the public by the EPA without further notice.
57. Any agent, owner, or operator of CLI violating the terms or provisions of this Order may subject the violator to civil or criminal penalties as prescribed in section 14 of FIFRA, 7 U.S.C. § 136l.

58. CLI may seek federal judicial review of this Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n. The issuance of this Order shall not constitute a waiver by EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law to address this matter or any other matters or unlawful acts not specified in this Order.
59. The issuance of this Order shall not constitute a waiver by EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law to address this matter or any other matters or unlawful acts not specified in this Order.
60. This Order shall be effective immediately upon receipt by CLI, or any agents of CLI.
61. This Order shall remain in effect unless and until revoked, terminated, suspended, or modified in writing by EPA.
62. If any provision or provisions of this Order is/are subsequently held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and they shall remain in full force and effect.
63. EPA may amend this Order and Attachment A at any time to include additional pesticides that EPA has a reason to believe CLI is distributing or selling or intends to distribute or sell in violation of FIFRA.

VI. OTHER MATTERS

64. For additional information about this Order, please contact Julie Jordan, Enforcement Case Officer, at 415- 947-4207 or at jordan.julie@epa.gov. For any legal matters concerning this Order, including questions from legal counsel, please contact Margaret Alkon, Assistant Regional Counsel, at 415-972-3890 or at alkon.margaret@epa.gov.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COMPLAINANT

DATE: _____

By: _____

Matt Salazar, PE
Manager, Toxics Section
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX